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ROBERT GOMES, on behalf  
6 of himself and all others similarly situated

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

11 ROBERT GOMES, on behalf of  
himself and all others similarly situated

**Plaintiffs,**

14

15 WAL-MART ASSOCIATES, INC., a  
16 Delaware Corporation; and DOES 1  
through 100, Inclusive

## Defendants.

CASE NO.: 2:22-cv-06051 AB (KKx)  
**FIRST AMENDED CLASS AND  
REPRESENTATIVE ACTION  
COMPLAINT FOR DAMAGES AND  
RESTITUTION**

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGE;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. FAILURE TO PAY ALL WAGES UPON TERMINATION;
6. FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS;
7. UNFAIR COMPETITION; and
8. CIVIL PENALTIES LABOR CODE §2699

**DEMAND FOR JURY TRIAL**

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1 COMES NOW plaintiff ROBERT GOMES (hereinafter "Mr. Gomes" and/or  
2 "Plaintiff") on behalf of himself and all others similarly situated, and alleges as  
3 follows:

4 **GENERAL ALLEGATIONS**

5 **INTRODUCTION**

6 1. This is a Class Action, pursuant to California Code of Civil Procedure  
7 §382, on behalf of Plaintiff and all other current and former similarly situated  
8 employees employed by or formerly employed by WAL-MART ASSOCIATES,  
9 INC. ("Wal-Mart") and any subsidiaries or affiliated companies (hereinafter  
10 referred to as "Defendants"), within the State of California.

11 2. For at least four (4) years prior to the filing of this action and through  
12 to the present, Defendants on multiple occasions have had a pattern and practice of  
13 failing to pay wages for all time worked, including overtime wages, as a result of  
14 requiring Plaintiff and other non-exempt employees to wait in line for COVID-19  
15 temperature checks and screening prior to the start of their work shifts and as a  
16 result of requiring Plaintiff and other California non-exempt employees to undergo  
17 bag searches after clocking-out for their work shifts.

18 3. For at least four (4) years prior to the filing of this action and  
19 continuing to the present, Defendants have had a pattern and practice of failing on  
20 multiple occasions to provide Plaintiff and other similarly situated employees or  
21 former employees within the State of California a thirty (30) minute uninterrupted  
22 meal period for days on which the employees worked more than five (5) hours in a  
23 workday and a second thirty (30) minute uninterrupted meal period for days on  
24 which the employees worked in excess of ten (10) hours in a work day, and failing  
25 to provide compensation at the regular rate of pay for such unprovided meal periods  
26 as required by California wage and hour laws.

27 4. For at least four (4) years prior to the filing of this action and  
28 continuing to the present, Defendants have had a pattern and practice of failing on

1 multiple occasions to provide Plaintiff and similarly situated employees or former  
2 employees within the State of California rest periods of at least ten (10) minutes per  
3 four (4) hours worked or major fraction thereof and failing to provide compensation  
4 at the regular rate of pay for such unprovided rest periods as required by California  
5 wage and hour laws.

6 5. For at least three (3) years prior to the filing of this action and  
7 continuing through the present, Defendants have failed to pay Plaintiff and other  
8 similarly situated employees the full amount of their wages owed to them upon  
9 termination and/or resignation as required by Labor Code §§ 201 or 202.

10 6. For at least one (1) year prior to the filing of this action and continuing  
11 to the present, Defendants have failed to issue Plaintiff and other similarly situated  
12 employees with accurate itemized wage statements as required by Labor Code §  
13 226.

14 7. Plaintiff, on behalf of himself and all other similarly situated  
15 employees, brings this action pursuant to, including but not limited to, California  
16 Labor Code §§ 200, 201, 203, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558,  
17 1194, 1194.2, 1197, 1197.1, and 2698 *et seq.* as well as California Code of  
18 Regulations, Title 8, §11070, seeking unpaid overtime and minimum wages,  
19 liquidated damages, premium wages for non-compliant meal and rest periods,  
20 statutory and civil penalties, and reasonable attorney's fees and costs.

21 8. Plaintiff, on behalf of himself and all other similarly situated  
22 employees, pursuant to California Business & Professions Code §§17200-17208  
23 also seeks all monies owed but withheld and retained by Defendants to which  
24 Plaintiff and members of the Class are entitled.

25 **JURISDICTION AND VENUE**

26 9. This Court has federal question jurisdiction over the subject matter of  
27 Plaintiff's state law causes of action pursuant to the Class Action Fairness Act, 28  
28 U.S.C. § 1332(d)(2) ("CAFA"). This Court has original jurisdiction over Plaintiff's

1 Rule 23 class action claims under CAFA because Plaintiff and Defendant are  
2 citizens of different states and the matter in controversy exceeds \$5,000,000. In  
3 addition, the number of proposed class members in California is believed to exceed  
4 100 individuals.

5       10.   Venue is proper in the United States District Court for the Central  
6   District of California pursuant to 18 U.S.C. § 1391 because Defendants operate and  
7   do business in California, and each defendant is within the jurisdiction of this court  
8   for service of process purposes. A substantial part of the events giving rise to  
9   Plaintiff's claims occurred within this district and Defendants employ numerous  
10   Class Members in the State of California.

## PARTIES

**A. Plaintiff**

13        11. Plaintiff, Mr. Gomes, is a resident of the State of California. At all  
14 relevant times herein, he has been employed by Defendants as a non-exempt  
15 employee in California.

## **B. Defendants**

17        12. Defendant, Wal-Mart, a Delaware Corporation, operates a chain of  
18 retail centers with over 250 locations within the State of California. Wal-Mart  
19 employed Plaintiff and similarly situated persons within the State of California.

13. The true names and capacities, whether individual, corporate, associate,  
or otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are  
currently unknown to Plaintiff, who therefore sues defendants by such fictitious  
names under Code of Civil Procedure §474. Plaintiff is informed and believes, and  
based thereon alleges, that each of the defendants designated herein as a DOE is  
legally responsible in some manner for the unlawful acts referred to herein. Plaintiff  
will seek leave of court to amend this Complaint to reflect the true names and  
capacities of the defendants designated hereinafter as DOES when such identities  
become known.

1 14. Plaintiff is informed and believes, and based thereon alleges, that each  
2 defendant acted in all respect pertinent to this action as the agent of the other  
3 defendant, carried out a joint scheme, business plan or policy in all respects  
4 pertinent hereto, and the acts of each defendant are legally attributable to the other  
5 defendants.

## **FACTUAL BACKGROUND**

7 15. Defendants on multiple occasions have had a pattern and practice of  
8 not compensating Plaintiff and other similarly situated employees wages for all time  
9 worked, including overtime wages, as a result of requiring Plaintiff and other non-  
10 exempt employees in the State of California to wait in line for COVID-19  
11 temperature checks and screening prior to the start of their shifts without  
12 compensating them for this work time and requiring Plaintiff and other similarly  
13 situated employees to undergo bag checks after clocking-out for their work shifts  
14 without compensating them for this work time.

15        16. Defendants have had a pattern and practice of on multiple occasions  
16 failing to provide Plaintiff and other similarly situated employees or former  
17 employees within the State of California a thirty (30) minute uninterrupted meal  
18 period for days on which the employees worked more than five (5) hours in a  
19 workday and a second thirty (30) minute uninterrupted meal period for days on  
20 which the employees worked in excess of ten (10) hours in a work day, and on  
21 multiple occasions failing to provide compensation at the regular rate of pay for  
22 such unprovided meal periods.

23        17. Defendants have had a pattern and practice of on multiple occasions  
24 failing to provide Plaintiff and similarly situated employees or former employees  
25 within the State of California rest periods of at least ten (10) minutes per four (4)  
26 hours worked or major fraction thereof and on multiple occasions failing to provide  
27 compensation at the regular rate of pay for such unprovided rest periods as required  
28 by California wage and hour laws.

18. Plaintiff and other similarly situated employees or former employees at  
all times pertinent hereto were not exempt from the overtime and meal and rest  
break provisions of California law, and the implementing rules and regulations of  
the IWC California Wage Orders.

5        19. Defendants have failed to comply with Labor Code § 201, 202 and 203,  
6 in that at the time Plaintiff's employment and the employment of other former  
7 employees of Defendants ended, Defendants willfully failed to pay overtime wages,  
8 minimum wages, and one hour of wages in lieu of each unprovided or interrupted  
9 meal period and unprovided rest period, as described herein.

10        20. Defendants have failed to comply with Labor Code § 226 on multiple  
11 occasions by not furnishing employees with itemized wage statements at the time of  
12 each payment of wages and by not providing itemized wage statements accurately  
13 showing, including but not limited to, total hours worked during the pay period and  
14 premiums due for meal and rest period violations.

## CLASS ACTION ALLEGATIONS

16       21. Plaintiff brings this action on behalf of himself, and all others similarly  
17 situated, as a class action pursuant to Federal Rules of Civil Procedure 23(a), (b)(2),  
18 and (b)(3). Plaintiff seeks to represent five Classes composed of and defined as  
19 follows:

## **Non-Exempt Employee Class**

All current and former employees of Defendants within the State of California at any time commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice of the class action is provided to the class (collectively referred to as "Non-Exempt Employee Class").

## Meal Period Class

All current and former employees of Defendants within the State of California at any time commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice of the class action is provided to the class, who worked shifts of 5 hours or more (collectively referred to as "Meal Period Class").

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1 **Rest Period Class**

2 All current and former employees of Defendants within the State of  
3 California at any time commencing four (4) years preceding the filing  
4 of Plaintiff's complaint up until the time that notice of the class action  
is provided to the class, who worked shifts of 4 hours or more  
(collectively referred to as "Rest Period Class").

5 **Late Pay Class**

6 All former employees of Defendants within the State of California at  
7 any time commencing three (3) years preceding the filing of Plaintiff's  
8 complaint up until the time that notice of the class action is provided to  
the class, who did not receive all their wages upon termination and or  
resignation of their employment (collectively referred to as "Late Pay  
9 Class").

10 **Wage Statement Class**

11 All current and former employees of Defendants within the State of  
12 California, to whom, at any time commencing one (1) year preceding  
13 the filing of Plaintiff's complaint up until the time that notice of the  
class action is provided to the class, were provided with wage  
statements (collectively referred to as "Wage Statement Class").

14 22. Plaintiff reserves the right to amend or modify the class description  
15 with greater specificity or further division into subclasses or limitation to particular  
16 issues.

17 23. This action has been brought and may properly be maintained as a class  
18 action under Federal Rule of Civil Procedure 23 because there is a well-defined  
19 community of interest in the litigation and the proposed Class is easily ascertainable.

20 **A. Numerosity**

21 24. The potential members of the Class as defined are so numerous that  
22 joinder of all the members of the Class is impracticable. While the precise number  
23 of Class Members has not been determined at this time, Plaintiff is informed and  
24 believes that there are over 500 Class Members employed by Defendants within the  
25 State of California.

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1       25. Accounting for employee turnover during the relevant periods  
2 necessarily increases this number. Plaintiff alleges Defendants' employment  
3 records would provide information as to the number and location of all Class  
4 Members. Joinder of all members of the proposed Class is not practicable.

5       **B. Commonality**

6       26. There are questions of law and fact common to Class Members. These  
7 common questions include, but are not limited to:

- 8       (1) Did Defendants violate Labor Code § 1194 by not compensating  
9                   Class Members overtime wages?
- 10      (2) Did Defendants violate Labor Code §§ 1194 and 1197 by not  
11                   paying Class Members minimum wages for all hours worked?
- 12      (3) Did Defendants violate Labor Code § 512 by not providing Class  
13                   Members with meal periods?
- 14      (4) Did Defendants violate Labor Code § 226.7 by not providing  
15                   Class Members additional wages for missed or interrupted meal  
16                   periods?
- 17      (5) Did Defendants violate Labor Code § 226.7 by not providing  
18                   Class Members additional wages for missed rest periods?
- 19      (6) Did Defendants violate Labor Code §§ 201 and 202 by failing to  
20                   pay Class Members upon termination or resignation all wages  
21                   earned?
- 22      (7) Are Defendants liable to Class Members for penalty wages under  
23                   Labor Code § 203?
- 24      (8) Did Defendants violate Labor Code § 226(a) by not furnishing  
25                   Class Members with accurate wage statements?
- 26      (9) Did Defendants violate the Unfair Competition Law, Business  
27                   and Professions Code § 17200, *et seq.*, by its unlawful practices  
28                   as alleged herein?

1 (10) Are Class Members entitled to restitution of penalty wages under  
2 Business and Professions Code § 17203?

3 (11) Are Class Members entitled to attorney's fees?

4 (12) Are Class Members entitled to interest?

5 **C. Typicality**

6 27. The claims of Plaintiff herein alleged are typical of those claims which  
7 could be alleged by any member of the classes, and the relief sought is typical of the  
8 relief which would be sought by each of the members of the classes in separate  
9 actions. Plaintiff and all members of the Classes sustained injuries and damages  
10 arising out of and caused by Defendants' common course of conduct in violation of  
11 laws and regulations that have the force and effect of law and statutes as alleged  
12 herein.

13 **D. Adequacy of Representation**

14 28. Plaintiff will fairly and adequately represent and protect the interests of  
15 the members of the Classes. Counsel who represents Plaintiff is competent and  
16 experienced in litigating wage and hour class actions.

17 **E. Superiority of Class Action**

18 29. A class action is superior to other available means for the fair and  
19 efficient adjudication of this controversy. Individual joinder of all Class Members  
20 is not practicable, and questions of law and fact common to the Class predominate  
21 over any questions affecting only individual members of the Class. Each member of  
22 the Class has been damaged and is entitled to recovery by reason of Defendants'  
23 illegal pattern and practice of failing to pay overtime wages, failing to pay minimum  
24 wages, failing to provide meal and rest breaks or compensation in lieu thereof, and  
25 failing to pay all wages due upon termination and/or resignation, as described  
herein.

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1 30. Class action treatment will allow those similarly situated persons to  
2 litigate their claims in the manner that is most efficient and economical for the  
3 parties and the judicial system. Plaintiff is unaware of any difficulties that are likely  
4 to be encountered in the management of this action that would preclude its  
5 maintenance as a class action.

## **FIRST CAUSE OF ACTION**

## **FAILURE TO PAY OVERTIME WAGES**

**(By Plaintiff and the Class Against All Defendants)**

9       31. Plaintiff realleges and incorporates by reference all of the allegations  
10 contained in the preceding paragraphs of this Complaint as though fully set forth  
11 herein.

12       32. At all times relevant to this complaint, California Labor Code §510 was  
13 in effect and provided: "(a) Eight hours of labor constitutes a day's work. Any work  
14 in excess of eight hours in one workday and any work in excess of forty hours in  
15 any one workweek . . . shall be compensated at the rate of no less than one and one-  
16 half times the regular rate of pay for an employee."

17       33. At all times herein mentioned, Plaintiff and Non-Exempt Employee  
18 Class regularly worked for Defendants during shifts that consisted of more than  
19 eight hours in a work day and/or more than forty hours in a work week and on  
20 multiple occasions these employees have not been paid overtime wages as a result  
21 of requiring Plaintiff and Non-Exempt Employee Class to wait in line for COVID-  
22 19 temperature checks and screening prior to the start of their shifts and requiring  
23 Plaintiff and Non-Exempt Employee Class to undergo bag searches after clocking-  
24 out for the end of their work shifts.

25       34. Accordingly, by requiring Plaintiff and Non-Exempt Employee Class to  
26 work in excess of eight hours per day and/or forty hours per week and without  
27 properly compensating overtime wages, as described herein, Defendants willfully  
28 violated the provisions of Labor Code §1194.

35. As a result of the unlawful acts of Defendants, Plaintiff and the Non-Exempt Employee Class have been deprived of overtime wages in an amount to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorney's fees, and costs, pursuant to Labor Code §§1194 and 1199; Code of Civil Procedure §1021.5; and Civil Code §3287.

## **SECOND CAUSE OF ACTION**

## **FAILURE TO PAY MINIMUM WAGES**

**(By Plaintiff and the Class Against All Defendants)**

9       36. Plaintiff realleges and incorporates by reference all of the allegations  
10 contained in the preceding paragraphs of this Complaint as though fully set forth  
11 herein.

12       37. At all relevant times, Plaintiff and the members of the Non-Exempt  
13 Employee Class were employees of Defendants covered by Labor Code §1197 and  
14 applicable Wage Orders.

15       38. Pursuant to Labor Code §1197 and applicable Wage Orders, Plaintiff  
16 and the members of the Non-Exempt Employee Class were entitled to receive  
17 minimum wages for all hours worked.

18       39. At all times herein mentioned, to the extent that Plaintiff and Non-  
19 Exempt Employee Class worked for Defendants during shifts that were less than  
20 eight hours in a work day and/or less than forty hours in a work week, on multiple  
21 occasions these employees have not been paid minimum wage, as a result of not  
22 being compensated for all hours worked, as described herein.

23 40. Defendants failure to pay Plaintiff and members of the Non-Exempt  
24 Employee Class minimum wages for all hours worked, as described herein, is in  
25 violation of Labor Code §1197 and applicable Wage Orders. As a result of  
26 Defendants' pattern and practice, Plaintiff and members of the Non-Exempt  
27 Employee Class have suffered damages in an amount, subject to proof, to the extent  
28 they were not paid minimum wages for all hours worked.

1       41. Pursuant to Labor Code §§ 1194 and 1194.2 Plaintiff and members of  
2 the Non-Exempt Employee Class are entitled to recover the full amount of unpaid  
3 minimum wages, prejudgment interest, liquidated damages, reasonable attorneys'  
4 fees, and costs of suit.

### **THIRD CAUSE OF ACTION**

## **FAILURE TO PROVIDE MEAL PERIODS**

**(By Plaintiff and the Class Against All Defendants)**

8       42. Plaintiff realleges and incorporates by reference all of the allegations  
9 contained in the preceding paragraphs of this Complaint as though fully set forth  
10 herein.

11        43. Pursuant to Labor Code §512, no employer shall employ an employee  
12 for a work period of more than five (5) hours without a meal break of not less than  
13 thirty (30) minutes in which the employee is relieved of all of his or her duties.  
14 Furthermore, no employer shall employ an employee for a work period of more than  
15 ten (10) hours per day without providing the employee with a second meal period of  
16 not less than thirty (30) minutes in which the employee is relieved of all of his or her  
17 duties. Plaintiff and other members of the Meal Period Class on multiple occasions  
18 were not provided with requisite meal periods as contemplated under the law.

19       44. Pursuant to Labor Code §226.7, if an employer fails to provide an  
20 employee with a meal period or rest period as provided in the applicable Wage  
21 Order of the Industrial Welfare Commission, the employer shall pay the employee  
22 one additional hour of pay at the employee's regular rate of compensation for each  
23 work day that the meal period or rest period is not provided.

24 45. By their failure to provide Plaintiff and members of the Meal Period  
25 Class with the meal periods contemplated by California law, and failing to provide  
26 compensation for such unprovided meal periods, as alleged above, Defendants  
27 willfully violated the provisions of Labor Code §512 and applicable Wage Orders.

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1       46. As a result of Defendants' unlawful conduct Plaintiff and the other  
2 members of the Meal Period Class have suffered damages in an amount, subject to  
3 proof, to the extent they were not paid premium wages owed for missed and late  
4 meal periods.

5 47. Plaintiff and the other members of the Meal Period Class are entitled to  
6 recover the full amount of their unpaid additional pay for missed meal periods.  
7 Pursuant to Code of Civil Procedure §1021.5, Plaintiff and the other members of the  
8 Meal Period Class are entitled to recover reasonable attorney's fees and costs of  
9 suit.

10 48. Pursuant to Civil Code § 3287(a), Plaintiff and other members of the  
11 Meal Period Class are entitled to recover prejudgment interest on the additional pay  
12 owed for missed meal periods.

#### **FOURTH CAUSE OF ACTION**

## **FAILURE TO PROVIDE REST PERIODS**

**(By Plaintiff and the Class Against All Defendants)**

16 49. Plaintiff realleges and incorporates by reference all of the allegations  
17 contained in the preceding paragraphs of this Complaint as though fully set forth  
18 herein.

19       50. California law and applicable Wage Orders require that employers  
20 "authorize and permit" employees to take paid 10 minute rest periods in about the  
21 middle of each 4-hour work period "or major fraction thereof." Accordingly,  
22 employees who work shifts of 3 ½ to 6 hours must be provided 10 minutes of paid  
23 rest period, employees who work shifts of more than 6 and up to 10 hours must be  
24 provided with 20 minutes of paid rest period, and employees who work shifts of  
25 more than 10 hours must be provided 30 minutes of paid rest period. Plaintiff and  
26 other members of the Rest Period Class on multiple occasions were not provided  
27 with requisite rest periods as contemplated under the law.

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1       51. Pursuant to Labor Code §226.7, if an employer fails to provide an  
2 employee with a meal period or rest period as provided in the applicable Wage  
3 Order of the Industrial Welfare Commission, the employer shall pay the employee  
4 one additional hour of pay at the employee's regular rate of compensation for each  
5 work day that the meal period or rest period is not provided.

6 52. By their failure to provide Plaintiff and other members of the Rest  
7 Period Class with the rest periods contemplated by California law, and failing to  
8 provide compensation for such unprovided rest periods, as alleged above,  
9 Defendants willfully violated the provisions of Labor Code §226.7 and applicable  
10 Wage Orders.

11       53. As a result of Defendants' unlawful conduct Plaintiff and the other  
12 members of the Rest Period Class have suffered damages in an amount, subject to  
13 proof, to the extent they were not paid additional pay, at the regular rate of pay,  
14 owed for missed rest periods.

15 54. Plaintiff and the other members of the Rest Period Class are entitled to  
16 recover the full amount of their unpaid additional premium pay for missed rest  
17 periods. Pursuant to Code of Civil Procedure §1021.5, Plaintiff and the other  
18 members of the Rest Period Class are entitled to recover reasonable attorney's fees  
19 and costs of suit.

20       55. Pursuant to Civil Code § 3287(a), Plaintiff and other members of the  
21 Rest Period Class are entitled to recover prejudgment interest on the additional pay  
22 owed for missed rest periods.

## **FIFTH CAUSE OF ACTION**

## **FAILURE TO PAY ALL WAGES UPON TERMINATION**

**(By Plaintiff and the Class Against All Defendants)**

26 56. Plaintiff realleges and incorporates by reference all of the allegations  
27 contained in the preceding paragraphs of this Complaint as though fully set forth  
28 herein.

1       57. At all relevant times, Plaintiff and other members of the Late Pay Class  
2 were employees of Defendants covered by Labor Code §§ 201 and 202.

3       58. Pursuant to Labor Code §§ 201 or 202, Plaintiff and other members of  
4 the Late Pay Class were entitled upon termination to timely payment of all wages  
5 earned and unpaid prior to termination. Discharged employees were entitled to  
6 payment of all wages earned and unpaid prior to discharge immediately upon  
7 termination. Employees who resigned were entitled to payment of all wages earned  
8 and unpaid prior to resignation within 72 hours after giving notice of resignation  
9 or, if they gave 72 hours previous notice, they were entitled to payment of all wages  
10 earned and unpaid at the time of resignation.

11       59. Defendants failed to pay Plaintiff and other members of the Late Pay  
12 Class all wages earned and unpaid prior to termination in accordance with Labor  
13 Code §§ 201 or 202. Plaintiff and other members of the Late Pay Class are  
14 informed and believe and thereon allege that within the applicable limitations  
15 period, Defendants had a pattern and practice of not paying upon termination, the  
16 wages owed to them as a consequence of failing to pay non-exempt employees for  
17 overtime wages, minimum wages, and meal and rest premium wages.

18       60. Defendants' failure to pay Plaintiff and members of the Late Pay Class  
19 all wages earned prior to termination in accordance with Labor Code §§ 201 and  
20 202 was wilful. Defendants had the ability to pay all wages earned by Plaintiff and  
21 other members of the Late Pay Class at the time of termination in accordance with  
22 Labor Code §§ 201 and 202, but intentionally adopted policies or practices  
23 incompatible with the requirements of Labor Code §§ 201 and 202.

24       61. Pursuant to Labor Code §§ 201 and 202, Plaintiff and other members  
25 of the Late Pay Class are entitled to all wages earned prior to termination that  
26 Defendants failed to pay them.

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62. Pursuant to Labor Code § 203, Plaintiff and other members of the Late Pay Class are entitled to penalty wages from the date their earned and unpaid wages were due, upon termination, until paid, up to a maximum of 30 days.

63. As a result of Defendants' unlawful conduct Plaintiff and other members of the Late Pay Class have suffered damages in an amount subject to proof, to the extent they were not paid for all wages earned prior to termination.

64. As a result of Defendants' unlawful conduct Plaintiff and the other members of the Late Pay Class have suffered damages in an amount subject to proof, to the extent they were not paid all penalty wages owed under Labor Code § 203.

11       65. Pursuant to Labor Code §§ 218 and 218.5, Plaintiff and the other  
12 members of the Late Pay Class are entitled to recover the full amount of their  
13 unpaid wages, penalty wages under Labor Code § 203, reasonable attorney's fees,  
14 and costs of suit. Pursuant to Labor Code § 218.6 or Civil Code § 3287(a),  
15 Plaintiff and the other members of the Late Pay Class are entitled to recover  
16 prejudgment interest on the amount of their unpaid wages and unpaid penalty  
17 wages.

## **SIXTH CAUSE OF ACTION**

## **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

**(By Plaintiff and Class Members Against All Defendants)**

21 66. Plaintiff realleges and incorporates by reference all of the allegations  
22 contained in the preceding paragraphs of this Complaint as though fully set forth  
23 herein.

24 67. At all relevant times, Plaintiff and other members of the Wage  
25 Statement Class were employees of Defendants covered by Labor Code § 226.

26 68. Pursuant to Labor Code § 226(a), Plaintiff and the other members of  
27 the Wage Statement Class were entitled to receive, semi-monthly or at the time of  
28 each payment of wages, an accurate itemized statement showing gross wages

1 earned, net wages earned, all applicable hourly rates in effect during the pay period  
2 and the corresponding number of hours worked at each hourly rate by the  
3 employee.

4 69. Defendants failed to provide Plaintiff and the other members of the  
5 Wage Statement Class accurate itemized wage statements in accordance with Labor  
6 Code § 226(a).

7 70. Plaintiff and the other members of the Wage Statement Class are  
8 informed and believe and thereon allege that at all relevant times, Defendants  
9 maintained and continue to maintain a policy and practice of issuing wage  
10 statements that do not show, including but not limited to, all hours worked and all  
11 earned wages and pay due for all hours worked at applicable rates of pay and  
12 premium wages for missed meal and rest periods. Defendants' practices resulted  
13 and continue to result in, the issuance of Wage Statements to Plaintiff and other  
14 members of the Class that do not comply with the itemization requirements.

15 71. Defendants' failure to provide Plaintiff and other members of the  
16 Wage Statement Class with accurate Wage Statements was knowing and  
17 intentional. Defendants had the ability to provide Plaintiff and the other members  
18 of the Wage Statement Class with accurate Wage Statements, but intentionally  
19 provided wage statements that Defendants knew were not accurate.

20 72. As a result of Defendants' unlawful conduct, Plaintiff and other  
21 members of the Wage Statement Class have suffered injury. The absence of  
22 accurate information on their wage statements has delayed timely challenge to  
23 Defendants' unlawful pay practices, requires discovery and mathematical  
24 computation to determine the amount of wages owed, causes difficulty and expense  
25 in attempting to reconstruct time and pay records, and led to submission of  
26 inaccurate information about wages and amounts deducted from wages to state and  
27 federal government agencies.

28 ///

1 73. Pursuant to Labor Code § 226(e), Plaintiff and other members of the  
2 Wage Statement Class are entitled to recover \$50 for the initial pay period during  
3 the period in which violation of Labor Code § 226 occurred and \$100 for each  
4 violation of Labor Code §226 in a subsequent pay period, not to exceed an  
5 aggregate penalty of \$4,000 per employee.

6       74. Pursuant to Labor Code § 226(e) and § 226(g), Plaintiff and the other  
7 members of the Wage Statement Class were entitled to recover the full amount of  
8 penalties due under Labor Code §226(e) reasonable attorney's fees and costs of  
9 suit.

## **SEVENTH CAUSE OF ACTION**

## UNFAIR COMPETITION

**(By Plaintiff and Class Members Against All Defendants)**

13 75. Plaintiff realleges and incorporates by reference all of the allegations  
14 contained in the preceding paragraphs of this Complaint as though fully set forth  
15 herein.

16        76. The unlawful conduct of Defendants alleged herein constitutes unfair  
17 competition within the meaning of Business & Professions Code § 17200. Due to  
18 their unlawful business practices in violation of the Labor Code, Defendants have  
19 gained a competitive advantage over other comparable companies doing business  
20 in the state of California that comply with their obligations to compensate  
21 employees in accordance with the Labor Code.

22       77. As a result of Defendants' unfair competition as alleged herein,  
23 Plaintiff and similarly situated Class Members have suffered injury in fact and lost  
24 money or property. Plaintiff and similarly situated Class Members have been  
25 deprived from not being compensated overtime wages, from not being compensated  
26 minimum wages, and from not being provided with meal and rest breaks or  
27 compensation in lieu thereof, as described herein.

28 | //

1 78. Pursuant to Business & Professions Code § 17203, Plaintiff and  
2 similarly situated Class Members are entitled to restitution of all wages and other  
3 monies owed to them under the Labor Code, including interest thereon, in which  
4 they had a property interest which Defendants failed to pay them but withheld and  
5 retained for themselves. Restitution of the money owed to Plaintiff and similarly  
6 situated Class Members is necessary to prevent Defendants from becoming unjustly  
7 enriched by their failure to comply with the Labor Code.

8       79. Plaintiff and similarly situated Class Members are entitled to recover  
9 reasonable attorneys' fees in connection with their unfair competition claims  
10 pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine  
11 and/or the common fund doctrine.

## **EIGHTH CAUSE OF ACTION**

## **PRIVATE ATTORNEY GENERAL ACT**

14 (By Plaintiff and Class Members Against All Defendants)

15 80. Plaintiff realleges and incorporate by reference all of the allegations  
16 contained in the preceding paragraphs of this Complaint as though fully set forth  
17 herein.

18        81. During the period beginning one year period preceding the filing of  
19 the Complaint in this action (the “Civil Penalty Period”), Defendants violated,  
20 including but not limited, to Labor Code §§ 200, 201, 202, 203, 204, 210, 226(a),  
21 226(e), 226.3, 226.7, 256, 510, 512, 556, 1194, 1194.2, 1197 and 1197.1.

22        82. Labor Code § 2699(a) and (g) authorize an aggrieved employee, on  
23 behalf of themselves and other current and former employees, to bring a civil action  
24 to recover civil penalties pursuant to the procedures specified in Labor Code  
25 §2699.3.

26 | //

27 | //

28 | //

1       83. Plaintiff has complied with the procedures for bringing suit specified  
2 in Labor Code § 2699.3. On or about July 8, 2022, Plaintiff gave written notice to  
3 the Labor and Workforce Development Agency (“LWDA”) and to Defendants of  
4 the specified provisions of the Labor Code alleged to have been violated, and the  
5 LWDA elected not to investigate.

6       84. Pursuant to Labor Code § 2699(a) and (f), Plaintiff and the aggrieved  
7 employees are entitled to recover civil penalties for Defendants’ violations of the  
8 specified Labor Code sections during the Civil Penalty Period in the amount of one  
9 hundred dollars (\$100) for each employee per pay period for the initial violation  
10 and two hundred dollars (\$200) for each employee per pay period for each  
11 subsequent violation.

12       85. In addition to the civil penalties recoverable under Labor Code  
13 § 2699(a) and (f), to the extent permitted by law, Defendants’ failure to provide  
14 Plaintiff and aggrieved employees with accurate itemized wage statements, as  
15 described herein, entitles Plaintiff to seek separate civil penalties for Defendants’  
16 violation of Labor Code § 226(a) and 226(e). For violations of Labor Code §  
17 226(a), Plaintiff seeks civil penalties provided by Labor Code § 226.3. Pursuant to  
18 Labor Code § 226.3, “[a]ny employer who violates subdivision (a) of section 226  
19 shall be subject to a civil penalty in the amount of two hundred dollars (\$250) per  
20 employee per violation in an initial violation and one thousand dollars (\$1,000) per  
21 employee for each violation in a subsequent citation, for which the employer fails  
22 to provide the employee a wage deduction statement or fails to keep the required in  
23 subdivision (a) of section 226.” Accordingly, Plaintiff and aggrieved employees  
24 are entitled to recover civil penalties for violations of Labor Code § 226.3 and  
25 seeks default civil penalties for each of Defendants’ numerous violations of Labor  
26 Code §226(e).

27       ///

28       ///

1       86. Moreover, pursuant to Labor Code §1197.1, subdivision (a): “Any  
2 employer or other person acting either individually or as an officer, agent, or  
3 employee of another person, who pays or causes to be paid to any employee a wage  
4 less than the minimum fixed by an applicable state or local law, or by an order of  
5 the commission shall be subject to a civil penalty, restitution of wages, liquidated  
6 damages payable to the employee, and any applicable penalties imposed pursuant  
7 to Section 203 as follows:

8       a. “For any initial violation that is intentionally committed, one hundred  
9            dollars (\$100) for each unpaid employee for each pay period of which  
10           the employee is underpaid. This amount shall be in addition to an  
11           amount sufficient to recover underpaid wages, liquidated damages  
12           pursuant to Section 1194.2, and any applicable penalties imposed  
13           pursuant to Section 203.

14       b. For each subsequent violation for the same specific offence, two  
15            hundred fifty dollars (\$250) for each underpaid employee for each pay  
16           period for which the employee is underpaid regardless of whether the  
17           initial violation is intentionally committed. This amount shall be in  
18           addition to an amount sufficient to recover underpaid wages,  
19           liquidated damages pursuant to Section 1194.2, and any applicable  
20           penalties imposed pursuant to Section 203.

21       c. Wages, liquidated damages, and any applicable penalties imposed  
22           pursuant to Section 203, recovered pursuant to this section shall be  
23           paid to the affected employee.”

24       87. Plaintiff is informed and believes, and based thereon alleges, that  
25 Defendants’ caused Plaintiff and aggrieved employees not to be paid minimum  
26 wages as a result of Defendants, without limitation, routinely failing to pay Plaintiff  
27 and other aggrieved employees’ wages for all hours worked or otherwise under  
28 Defendants’ control due to, without limitation, routinely failing to accurately track

1 and/or pay for all hours actually worked; and engaging, suffering, or permitting  
2 employees to wait in line for COVID-19 temperature checks and screening prior to  
3 the start of their work shifts as well as undergo bag searches after clocking-out for  
4 their work shifts. As a direct and proximate result of Defendants' conduct, Plaintiff  
5 and other aggrieved employees are entitled to recover directly from Defendants  
6 civil penalties pursuant to Labor Code § 1197.1.

7 88. In addition to the civil penalties recoverable under Labor Code  
8 §2699(a) and (f), to the extent permitted by law, Defendants' failure to pay Plaintiff  
9 and other aggrieved employees timely wages for all hours worked, entitles Plaintiff  
10 to seek separate civil penalties for Defendants' violation of Labor Code §§ 204 and  
11 210. Specifically, due to Defendants' failure to pay Plaintiff and other aggrieved  
12 employees on a timely and bi-monthly basis for all applicable wages, including but  
13 not limited to overtime and premium wages for missed meal and rest periods,  
14 Defendants failed to pay all wages owed within seven days of the close of the  
15 payroll period in accordance with Labor Code §204(d). Labor Code § 210(a)  
16 provides that "in addition to, and entirely independent and apart from, any other  
17 penalty provided in this article, every person who fails to pay the wages of each  
18 employee as provided in Sections...204...shall be subject to a civil penalty as  
19 follows: "(1) For any initial violation, one hundred dollars (\$100) for each failure  
20 to pay each employee. (2) For each subsequent violation, or any wilful or  
21 intentional violation, two hundred dollars (\$200) for each failure to pay each  
22 employee, plus 25 percent of the amount unlawfully withheld." Accordingly,  
23 Plaintiff and other aggrieved employees are entitled to recover civil penalties for  
24 violations of Labor Code §§ 204 and 210.

25 89. Lastly, pursuant to Labor Code § 558 any employer or other person  
26 acting on behalf of an employer who violates, or causes to be violated, a section of  
27 this chapter or any provision regulating hours and days of work in any order of the  
28 Industrial Welfare Commission shall be subject to a civil penalty as follows: "(1)

1 For any initial violation, fifty dollars (\$50) for each underpaid employee for each  
2 pay period for which the employee was underpaid in addition to an amount  
3 sufficient to recover underpaid wages. (2) For each subsequent violation, one  
4 hundred dollars (\$100) for each underpaid employee for each pay period for which  
5 the employee was underpaid in addition to an amount sufficient to recover  
6 underpaid wages.” As indicated herein, Plaintiff and aggrieved employees were  
7 underpaid wages as a result of the asserted Labor Code violations and therefore are  
8 entitled to recover civil penalties under Labor Code § 558.

9 90. Pursuant to Labor Code § 2699(g), Plaintiff and the aggrieved  
10 employees are entitled to an award of reasonable attorneys’ fees and costs in  
11 connection with their claims for civil penalties.

12 **PRAYER**

13 WHEREFORE, on behalf of himself and all others similarly situated,  
14 Plaintiff prays for judgment against Defendants as follows:

- 15 A. An order certifying that Plaintiff may pursue his claims against  
16 Defendants as a class action on behalf of the Class Members;
- 17 B. An order appointing Plaintiff as Class representative and appointing  
18 Plaintiff’s counsel as class counsel;
- 19 C. Damages for unpaid wages under Labor Code §§201 or 202;
- 20 D. Damages for unpaid penalty wages under Labor Code §203;
- 21 E. Damages for unpaid wages for missed meal periods under Labor Code  
22 §226.7;
- 23 F. Damages for unpaid wages for missed rest periods under Labor Code  
24 §226.7;
- 25 G. Damages for minimum wages;
- 26 H. Damages for premium wages;
- 27 I. Liquidated damages for unpaid minimum wages;
- 28 J. Damages for unpaid overtime wages under Labor Code §1194;

- 1 K. Restitution under Business and Professions Code §17203;
- 2 L. Pre-judgment interest;
- 3 M. Costs;
- 4 N. Civil penalties pursuant to Labor Code §§ 210, 226.3, 558, 1197.1,  
5 2699(a)-(f);
- 6 O. Reasonable attorney's fees; and
- 7 P. Such other and further relief as the Court deems just and proper.

8  
9 DATED: December 6, 2022

THE NOURMAND LAW FIRM, APC

10  
11 By: /s/ James A. De Sario  
12 Michael Nourmand, Esq.  
13 James A. De Sario, Esq.  
14 Attorneys for Plaintiff

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